



FLASH NEWS

6/19

NATIONAL DECISIONS OF INTEREST FOR THE UNION

OVERVIEW OF THE MONTH OF JULY 2019



Spain – Constitutional Court

Social policy - Equality of treatment - Indirect gender discrimination

The Constitutional court, when referred an appeal of unconstitutionality, declared the invalidity of a national provision that established a difference in the treatment of part-time and full-time employees, particularly regarding the reduction coefficients applied for calculating the amount of their retirement pension.

Recalling the relevant case-law of the Court (*Elbal Moreno*, [C-385/11](#); *Espadas Recio*, [C-98/15](#) and *Villar Láiz*, [C-161/18](#)), the Constitutional court ruled that the national provision in question was the cause of an indirect gender discrimination, insofar as, statistically, the majority of part-time employees are females.

Tribunal Constitucional, [ruling of 3.07.2019, STC no. 91/2019 \(ES\)](#)

[Press release \(ES\)](#)



France – Council of State

Personal data - Taxation - FATCA

The Council of State dismissed the application for annulment seeking the refusal to repeal the rulings creating a processing for the automatic exchange of information, in turn organising the collection and transfer of personal data to the American tax authorities, pursuant to a Franco-American convention (FATCA). In view of the specific guarantees under which this tax convention and the American laws concerning the protection of personal data surround the contentious processing, particularly in terms of access to the collected data and the possibility of requesting their rectification, the Council of State held that this processing did not disregard regulation 2016/679 (GDPR, particularly Article 46, providing for such guarantees), or the right to protection of personal data and the right to respect for private life of the persons concerned (Articles 7 and 8 of the Charter of Fundamental Rights). In addition, it ruled that the interpretation of the invoked provisions proved to be such that it did not justify a referral to the Court for a preliminary ruling.

Council of State, [decision of 19.07.2019, no. 424216 \(FR\)](#)



France – Court of cassation

European arrest warrant - Issuing judicial authority

After having established that the contentious European arrest warrant was issued by a judge of the court of first instance of Hanover (Germany), taken after and on the same basis as that of a first warrant previously issued by the public prosecution of Hanover, of which the unlawfulness had been raised based on the [C-508/18](#) case, the Court of cassation held that the decision-making power of the judge of the court of first instance, as the sitting judge, is not likely to be the subject of external orders and instructions, particularly from the executive authority. The Court then found that the contentious warrant was issued by an “issuing judicial authority” within the meaning of Article 6, paragraph 1, of the framework decision 2002/584/JAI, as interpreted in light of the [C-508/18](#) and [C-82/19](#) cases, and ruled that the procedure for surrender was hence legal, because it was compliant with the requirements of the Court of justice.

Court of Cassation, [ruling of 24.07.2019, 19-84.068 \(FR\)](#)



United-Kingdom – Supreme Court

Right of access to documents - Documents submitted by the parties during the proceedings

The Supreme court ruled that it is within the powers of all the courts of the United Kingdom to grant third-parties access to the documents submitted by the parties during the proceedings and to determine the scope of such an access, taking into consideration the constitutional principle of transparency of justice that goes beyond the limited scope of the rules of civil procedure.

In this regard, the Supreme court stated that it is the responsibility, on one hand, of the person requesting access to explain the reason for this request while proving in what way such an access can be justified under the principle of transparency of justice and, on the other hand, of the judge, to balance interests, while assessing both the practicality and proportionality of the requested access.

UK Supreme Court, [ruling of 29.07.2019, *Cape Intermediate Holdings Limited v Dring* \[2019\] UKSC 38 \(EN\)](#)

[Press release \(EN\)](#)



Germany – Federal Constitutional Court

Constitutional right - Banking union - Democratic legitimacy

The Federal constitutional court dismissed two constitutional appeals filed by individuals regarding the participation of the Federal government and the Bundestag in the creation of the Banking union and, particularly, the establishment of mechanisms stated by regulation no. 1024/2013 and no. 806/2014, based on Articles 127, paragraph 6, and 114, TFEU.

It found that if Article 23, paragraph 1, sub-paragraph 3 of the Grundgesetz (fundamental law), read in conjunction with Articles 79, paragraph 3, and 20, paragraphs 1 and 2, of the Grundgesetz, required a minimum democratic control and legitimacy at the time of the Europeanisation of the national administrative organisation and the creation of independent entities or bodies of the Union, these provisions did not oppose the said participation and that the right of democratic self-determination of the applicants enshrined in Article 38, paragraph 1, sub-paragraph 1 of the Grundgesetz, was not violated.

Bundesverfassungsgericht, [ruling of 30.07.2019, 2 BvR 1685/14 and 2 BvR 2631/14 \(DE\)](#)